

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition                 | : |          |
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| of  | : |          |
|   | : |          |
| LAKE PLACID 1980 OLYMPIC GAMES, INC.          | : | DECISION |
|   | : |          |
| for Revision of a Determination or for Refund | : |          |
| of Sales and Use Taxes under Articles 28 and  | : |          |
| 29 of the Tax Law for the Periods Ended       | : |          |
| February 29, 1980 through August 31, 1980.    | : |          |

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Petitioner, Lake Placid 1980 Olympic Games, Inc., P.O. Box 1980, Lake Placid, New York 12946, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods ended February 29, 1980 through August 31, 1980 (File No. 35949).

A hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on November 14, 1984 at 11:00 A.M., with all briefs to be submitted by May 17, 1985. Petitioner appeared by William H. Kissel, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

#### ISSUES

I. Whether the petitioner is liable for sales tax on the sale of its assets at the conclusion of the 1980 Olympic Winter Games in Lake Placid, New York.

II. Whether the petitioner is liable for sales tax on the sale of meals at the 1980 Olympic Winter Games.

#### FINDINGS OF FACT

1. On September 18, 1981, the Audit Division, as the result of a field audit, issued a Notice of Determination and Demand for Payment of Sales and Use

Taxes Due against the petitioner, Lake Placid 1980 Olympic Games, Inc. ("the Committee"), for taxes due of \$43,785.19, plus interest of \$4,100.66, for a total due of \$47,885.85 for the periods ended February 29, 1980 through August 31, 1980.

2. It is the position of the Audit Division that the sales of the Committee's assets were retail sales of tangible personal property by a shop or store operated by the Committee and, therefore, are not exempt from the sales and use tax. The Audit Division further maintains that the Committee made sales of prepared meals which are also not exempt from tax.

3. On December 15, 1981, the Committee timely filed a petition for a hearing to review the notice of determination. The petitioner contends the Audit Division erroneously determined that sales tax was due on the sale of assets of the petitioner in that the petitioner is an exempt organization under section 1116(a)(4) of the Tax Law and was not involved in making retail sales from any shop or store operated by it. The Committee claims that it relied on assurances given by representatives of the Audit Division that the sale of assets was not subject to tax. The petitioner offered no argument of law regarding the purported sale of prepared meals.

4. On or about June 10, 1980, the Audit Division commenced a field audit of the books and records of petitioner. The auditor determined additional sales taxes due of \$13,606.93 on income from the rental of rooms at the Lake Placid Resort Hotel and \$25,930.65 on income from the rental of rooms at area motels for a total of \$39,537.58 for the period December 1, 1979 through February 29, 1980. The petitioner has agreed to and paid these taxes and, consequently, this amount is not at issue herein.

The auditor also determined the following additional sales taxes due which are at issue here: \$31,845.66 sales tax due on the sale of assets at the conclusion of the Games; \$8,507.28 sales tax due on the sale of meals; and \$3,432.25 sales tax due on the sale of admission tickets. The taxes at issue totalled \$43,785.19 and covered the periods ended February 29, 1980 through August 31, 1980.

At the hearing held herein, the Audit Division, based upon evidence presented by the petitioner at a pre-hearing conference, conceded that the petitioner was not liable for the additional sales taxes determined to be due on the sale of admission tickets.

5. Lake Placid 1980 Olympic Games, Inc., a not-for-profit corporation exempt from payment of sales and use taxes pursuant to section 1116(a)(4) of the Tax Law, was organized in 1976 for the purpose of organizing, planning and promoting the 1980 Olympic Winter Games in Lake Placid, New York, in accordance with the rules and regulations of the International Olympic Committee. The Committee spent approximately six years (including a period of time prior to its organization) preparing for the Games themselves and for the auxiliary needs of thousands of visitors, athletes and officials.

All of the functions necessary for the life of a small community were organized and utilized in connection with the Games, including provisions for administration, security, communication, transportation and parking, housing, dining, medical and dental care, and a complete pharmacy and x-ray department. Among the articles accumulated to furnish these "community" functions were office supplies and furniture, foreign language typewriters, special communications equipment, television transmitting equipment, shortwave, printing and security equipment, temporary buildings and 140 mobile homes. In addition,

special equipment peculiar to athletic competition was acquired and assembled, such as, scoreboards, Bird air buildings and thyacoll grooming for ski jumps. The Committee purchased over 1,700 classes of items and over 200,000 individual items, at a cost of \$4,000,000.00.

6. After the close of the Games, each item had to be identified and disposed of accordingly. The categories of articles included the following:

- (1) Items loaned to the Committee for use during the Games and to be returned to the owners;
- (2) Leased equipment to be returned to the lessor;
- (3) Donated items designated by the donor for a specific governmental or not-for-profit organization following use during the Games;
- (4) Items donated without qualification as to subsequent use;
- (5) Property purchased with buy-back clauses, such that if the Committee did not wish to keep it the vendor would take it back;
- (6) Items to be disposed of by the Committee, either on site or from a central location, including articles suited to sale in large lots, specialized electronics and communications equipment with a limited market, miscellaneous goods of interest to the general public, and salvage.

7. At the time of the Games, all of these items were physically distributed among 77 different locations, including the six sites or venues where the events were conducted. Assets were located at numerous and distant sites, some as far away as Plattsburgh, which is 50 miles away, Ticonderoga, which is 60 miles away, and Elizabethtown, which is 25 miles from Lake Placid.

8. When the twelve days of competition ended on February 14, 1980, the process of clearing the sites and performing an inventory of the multitude of diverse items of property had to be undertaken. This process was complicated

by several factors. First, the right of the Committee to use various locations expired on different dates, ranging from March 1, 1980 to November 1, 1980, with no building remaining available past this date. Second, as soon as the Games ended, numerous members of the staff were laid off, leaving many areas in a nearly abandoned state. It became imperative to gather property from these sites immediately to prevent theft and vandalism. Third, there were innumerable chores associated with winding up to be accomplished. The remaining staff members were distributed at numerous offices and other locations in the area. As long as their work continued, the equipment and work space they needed had to be kept available to them. This necessitated the shuffling of personnel and supplies from one location to another. Finally, certain sites were to be altered, as part of use agreements, and readied for future tenants.

9. Arrangements were made by the Committee to utilize the 1932 Olympic Arena Complex for collecting items as they were brought in from the sites. The Arena was large enough to accommodate a large number of items and the numerous activities associated with inventory, designation and distribution. Materials which had been loaned, leased, donated, or which were being returned through exercise of a buy-back clause were to be cleaned up, packaged and arrangements made for their return.

It was recognized that some items, such as 500 bunk beds, 750 wardrobes and complete kitchen and cafeteria set ups, were best suited to sale in large lots. Colleges, schools, local and county governmental agencies, hospitals and churches were contacted by direct mail, telephone and word of mouth, indicating the nature of the property and approximately when it would be available. Inspection and sales were made by appointment. Following this, motels, hotels and restaurants were given opportunity to purchase in quantity. Representatives

of these institutions made appointments to inspect items, with inspection, purchase and shipment often taking place at the site itself.

Specialized communications and electronics equipment was advertised in trade publications and disposed of to the extent possible. Upon request, itemized lists, serial numbers and technical descriptions were sent to prospective purchasers, who either made arrangements to inspect and possibly purchase the property or who asked that the equipment be shipped to them directly, sight unseen.

10. Considering the restraints of time and the logistics of collecting, sorting and identifying items, the most feasible method for disposition of the remaining assets was to liquidate the property in Lake Placid.

Areas requiring immediate evacuation were cleared first and the property collected was taken to the Arena for sorting. The gathering, identifying as to source and destination, and distribution was a continuing process. Items to be sold were put in like groups. It was decided that as soon as a suitable quantity of goods was collected, sales would be made in order to provide space for additional items that were continually being brought in.

Sales occurred in connection with collections from various sites. Accordingly, sales at the Olympic Arena on three successive weekends liquidated the vast majority of miscellaneous and general items, but yielded lower revenue than the items sold in large lots.

At the end of April, all remaining assets of the Committee were transferred to the smaller Sports Office building. At the Sports Office, workmen were removing partitions and reconstructing the interior space. There was no sales staff, no display of items for sale, no index as to where things were. People who were interested in purchasing from odds and ends of Olympic

memorabilia stopped in during the workers' regular hours. Also, as lumber, light fixtures and doors were removed from the interior of the Sports Office, they were sold on the site.

Similarly, at the former Broadcast Center, which was used as a clearance facility following closing of the Sports Office, items, particularly lumber, doors, electrical and heating equipment which came from the building itself, were sold.

At the end of October, 1980, as the work was completed, and the final sites were cleared, items left were sold for salvage.

11. Throughout the nearly ten month period during which disposal of the 1980 Olympic Winter Games' assets took place, there were no advertised or scheduled sales other than the three weekend sales. The Committee did not at any time during the disposal process sell items at a location where other sales were being made by third parties who were required to collect sales tax.

Total revenues from the sale of assets were \$909,343.00. Of this amount, \$454,405.00 represented sales to exempt customers. Purported taxable sales are therefore \$454,938.00 with a tax due thereon of \$31,845.66.

12. The disposition of assets was done in the manner approved by petitioner's Executive Committee. The prices were set by the purchasing agent at 10% to 50% of cost.

13. During the Games, in accordance with the rules and regulations of the International Olympic Committee, the petitioner was required to provide meals, at cost, to certain members of the press and employees of those broadcast companies designated to handle the Games. The Committee contracted with a third party to manage the cafeteria-type dining area which the Committee established in the aforementioned Broadcast Center and the Press Center. These

facilities were also used to feed, free of charge, those volunteers working at or in the vicinity of the Centers. Total revenues from the sale of meals were \$121,532.61 with a purported tax due thereon of \$8,507.28.

14. The petitioner offered no evidence that it relied on assurances given by representatives of the Audit Division that the sale of assets was not subject to tax.

#### CONCLUSIONS OF LAW

A. That section 1116 of the Tax Law provides, in pertinent part, as follows:

"(b) Nothing in this section shall exempt:

(1) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section;

(2) sales of food or drink in or by a restaurant, tavern or other establishment operated by an organization described in paragraph (1), paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section, other than sales exempt under paragraph (ii) of subdivision (d) of section eleven hundred five, from the taxes imposed hereunder, unless the purchase is an organization exempt under this section."

B. That 20 NYCRR 529.7(i) provides, in pertinent part, as follows:

"(i) Sales by exempt organizations. (1) Except as provided in paragraphs (2) through (4) of this subdivision, sales of tangible personal property and services by exempt organizations are exempt from the sales and use tax.

(2) Retail sales of tangible personal property made by any shop or store operated by an exempt organization described in section 1116(a)(4), (5) or (6) are subject to the sales and use tax. A shop or store as used in this section includes any place or establishment where goods are sold from display with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax.

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(3) Sales of food or drink in or by a restaurant, tavern, or other establishment operated by an exempt organization are subject to sales tax, other than the sales exempt under section 1105(d)(ii) of the Tax Law described in subdivision (h) of section 527.8 of this



Title, or where the purchaser is a person or organization exempt under this Part. A restaurant, tavern, or other establishment as used in this section includes any dining room, bar and barroom, or concession stand operated with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary restaurant, tavern, or other establishment located on the same premises as persons required to collect tax. It is immaterial whether or not the restaurant, tavern, or other establishment is located on the premises of the exempt organization or whether or not the use of such facilities is restricted to the members of the organization."

C. That the sales of assets by petitioner at the conclusion of the 1980 Olympic Winter Games were not made through a shop or store within the meaning and intent of 20 NYCRR 529.7(1)(2) and are therefore not subject to sales tax. In no instances were sales made from a place or establishment where goods are sold from display with a degree of regularity, frequency and continuity. The sales made following the Games never took place in an area devoted exclusively to selling tangible personal property. Activities associated with gathering, identifying and readying articles for disposal were always present. Additionally, the Committee did not hold regular sales hours or days (apart from the limited weekend sales), nor were the items which were sold originally purchased for resale. Also, the items sold were sold at 10% to 50% of their original cost.

D. That the sales of meals by the Committee at the Broadcast Center and the Press Center constituted the sales of food or drink in or by a restaurant, tavern or other establishment within the meaning and intent of section 1116(b)(2) of the Tax Law and 20 NYCRR 529.7(i)(3) and are therefore subject to tax. The petitioner failed to sustain the burden of proof required to show that said premises were not operated with a degree of regularity, frequency and continuity as specified in the Tax Law and regulations.


E. That the petition of Lake Placid 1980 Olympic Games, Inc. is granted to the extent indicated in and Finding of Fact "4" and Conclusion of Law "C",


supra; the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on September 18, 1981; and that, except as so granted, the petition is denied.

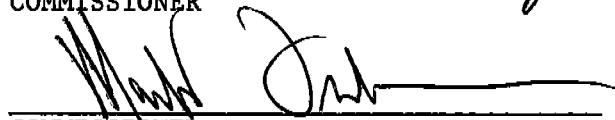
DATED: Albany, New York

STATE TAX COMMISSION

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